

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

CALEB BARNETT, et al.,)
)
 Plaintiffs,)
)
 v.) No. 3:23-cv-209-SPM
)
 KWAME RAOUL, et al.,)
)
 Defendants.)

DANE HARRELL, et al.,)
)
 Plaintiffs,)
)
 v.) No. 3:23-cv-141-SPM
)
 KWAME RAOUL, et al.,)
)
 Defendants.)

JEREMY W. LANGLEY, et al.)
)
 Plaintiffs,)
)
 v.) No. 3:23-cv-192-SPM
)
 BRENDAN KELLY, et al.,)
)
 Defendants.)

FEDERAL FIREARMS)
 LICENCES OF ILLINOIS, et al.)
)
 Plaintiffs,)
)
 v.) No. 3:23-cv-215-SPM
)
 JAY ROBERT "JB" PRITZKER,)
 et al.,)
)
 Defendants.)

TRANSCRIPT OF VIDEOCONFERENCE PROCEEDINGS
BEFORE THE HONORABLE STEPHEN P. McGLYNN
UNITED STATES DISTRICT JUDGE

AUGUST 14, 2023

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EAST ST. LOUIS, ILLINOIS

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1 (Proceedings began at 1:31 p.m.)

2 *****

3 COURTROOM DEPUTY: The United States District Court
4 for the Southern District of Illinois is now in session. The
5 Honorable Stephen McGlynn presiding.

6 Court calls case #23-cv-209, *Caleb Barnett, et al. v.*
7 *Kwame Raoul, et al.* Case is called for a Status Conference.

8 Parties, if you would please identify yourselves for
9 the record.

10 MR. MAAG: Thomas Maag for the Crawford County
11 Plaintiffs.

12 MR. MICHEL: Chuck Michel for the FFL Illinois
13 Plaintiff.

14 MR. ROWEN: Matthew Rowen for the Barnett Plaintiffs.

15 MR. OWENS: Troy Owens for the McHenry County State's
16 Attorney's Office.

17 MS. ASFOUR: Katherine Asfour for the Randolph County
18 Defendants.

19 MS. NEUBAUER: Jennifer Neubauer, FFL Plaintiffs.

20 MR. SCHAG: Mike Schag for the Crawford County
21 State's Attorney.

22 MR. YSURSA: Thomas Ysursa for James Gomric, St.
23 Clair County State's Attorney.

24 THE COURT: All right. Good afternoon. Is that
25 everybody?

1 MR. WELLS: Your Honor, this is Christopher Wells for
2 the State Defendants.

3 MS. BAUTISTA: Laura Bautista also for the State
4 Defendants.

5 THE COURT: Okay. All right. We have before the
6 Court, really, the *Langley* motions on Counts IV -- Counts IV
7 and VI, constitutional challenge to the statute in question on
8 the grounds of vagueness.

9 Now, the parties have briefed the issue, and the
10 other matters are before the Seventh Circuit. I don't know
11 when they are going to rule, but these cases involving the
12 Second Amendment are coming in pretty fast and furious from
13 all over the country and all different circuits, and it
14 doesn't appear that we judges are of one mind with respect to
15 some of these important issues.

16 My thought is while I want to see what the Seventh
17 Circuit does with that which is up on appeal, I don't control
18 their timeline and I do want to address the constitutional
19 arguments before -- before too long.

20 And, so, for the Plaintiff, do you want to stand on
21 your briefs that you filed or do you want oral argument?

22 MR. MAAG: I generally would prefer oral argument,
23 but it's the Court's pleasure. I know in the Southern
24 District oral argument in recent years has become more and
25 more of a rare thing.

1 THE COURT: Not in my courtroom.

2 All right. Chris, are you going to be the lead for
3 the State?

4 MR. WELLS: Yes, Your Honor, depending on the timing.
5 I have a family vacation scheduled next week, but I don't know
6 what the Court was thinking in terms of argument.

7 THE COURT: I was thinking next week.

8 MR. WELLS: You were thinking next week?

9 THE COURT: We will pick out a time that's convenient
10 for everybody.

11 Tom, would you be -- I guess you would be doing the
12 arguing on behalf of the Plaintiffs?

13 MR. MAAG: I would imagine that's correct.

14 THE COURT: Okay. But then we have -- Boy, I don't
15 know all the Defendants in *Langley*.

16 Tom, I know Brendan Kelly -- I mean, the Government
17 is -- Is that Crawford County? Is *Langley* a Crawford County
18 case or what --

19 MR. MAAG: Crawford County has Brendan Kelly and has
20 the State's Attorney from Crawford County. I'd have to look
21 to see if there's anybody else, but that's all I can think of
22 offhand.

23 THE COURT: All right. Well, anybody that's on, are
24 you intending to or would like to participate in oral argument
25 on behalf of a named defendant in the *Langley* case?

1 MR. SCHAG: Mike Schag for Crawford County. I think
2 that we will probably just defer to the other arguments that
3 are going on.

4 THE COURT: Okay. All right. Well, my preference is
5 always oral arguments on important motions, and so I'm going
6 to set this for oral argument. Is there -- Does anybody
7 believe that they need additional discovery before we proceed
8 to oral argument on these motions?

9 MR. WELLS: Yes, Your Honor, the State Defendants, as
10 we said in our response to the motion, we would like
11 discovery. In particular we think that -- And replying, also,
12 in their opening brief, the Plaintiffs have made various
13 assertions about certain types of magazines, about whether
14 those are interchangeable. We think there are going to be
15 factual disputes about which particular magazines are, in
16 fact, interchangeable between handguns and long guns.

17 There's also been declarations filed by the
18 Plaintiffs, as well as a third-party gun store owner, and we
19 feel we are entitled to depose those individuals.

20 THE COURT: Have you discussed with the lawyers
21 trying to get those depositions set?

22 MR. WELLS: We have not, Your Honor. Our
23 understanding has been that everything has been stayed pending
24 the Seventh Circuit appellate proceedings. We are happy to
25 reach out to Counsel and discuss a schedule to get those taken

1 care of.

2 MR. MAAG: As far as the interchangeability goes, I
3 mean, if the Court wants actual examples, they can be brought
4 to the Court or to anywhere the Court deems appropriate for
5 inspection and demonstration.

6 MR. WELLS: Your Honor, our view is really that while
7 we would like to contest many of the factual assertions that
8 have been made, that the interchangeability of some subset of
9 magazines by itself is not going to be sufficient to establish
10 a vagueness challenge to the statute that's been filed as a
11 facial challenge, but we are happy to get into that more in
12 argument, as you know.

13 THE COURT: Well, here's where I am coming from: We
14 are talking about a challenge of the doctrine of vagueness as
15 to the enforceability of a criminal statute. It's generally a
16 question of law and not a question of fact. And, so, but my
17 job as a District Judge is to allow a party to develop a
18 sufficient record, and, you know, if it's --

19 What depositions do you think you would need to
20 develop a sufficient record, Mr. Wells?

21 MR. WELLS: So, I think there are essentially two
22 categories, Your Honor. One, we would be inclined to serve
23 third-party subpoenas on firearms manufacturers to address
24 these kinds of interchangeability. We don't think that the
25 evidence that Plaintiffs have put in the record about what's

1 interchangeably is consistent with what those manufacturers
2 would consider interchangeable. So, obtaining records from
3 them and then conducting depositions, and then depositions of
4 the Plaintiffs themselves and the declarants that they've put
5 in the record.

6 THE COURT: That sounds like a lot.

7 MR. MAAG: Yes, every single firearm we pled is
8 interchangeable, we are prepared to bring actual examples to
9 demonstrate it.

10 THE COURT: Well, you better alert the U.S. Marshals.

11 MR. MAAG: Of course, with the appropriate permission
12 of the Court. Or, let the State pick the ones that they
13 contest.

14 THE COURT: Well, I think that -- I would like to get
15 this case argued. Now, when the Seventh Circuit makes its
16 decision on matters that are before it now, that may or may
17 not be dispositive of what we have here, but I -- because
18 there are criminal statutes and because they implicate Second
19 Amendment rights and because, as we know, what the state law
20 is now, if you are found guilty of a felony you are not
21 allowed to possess firearms. And, so, you have a number of
22 people that were otherwise law abiding might be tripped up on
23 the statute that would have to forfeit all their firearms.

24 I'm sorry?

25 MR. MICHEL: My mistake, Your Honor. I forgot to

1 mute my phone.

2 THE COURT: That's okay. It wouldn't be the first
3 time I had catcalls from the gallery when I was speaking....
4 which is okay, I'm used to that.

5 Anyway, so it's a serious question. Obviously a
6 facial challenge to statutes on the ground of vagueness are
7 tough, and then you also, I think -- and I will entertain
8 arguments on this, whether in light of *Bruen*, the Supreme
9 Court is suggesting that maybe we should analyze vagueness
10 challenges regarding Second Amendment rights the same way we
11 might analyze criminal statutes that implicate First Amendment
12 rights. But, I will let you guys argue that.

13 I think, you know, subpoenaing records of
14 manufacturers, I don't know that that's necessary. You have
15 identified specific -- identified specific firearms, and my
16 concerns deal with the language that refers to copies, similar
17 devices, or things that are AK-like or AR-like. I think
18 that's really going to be more closely the focus on whether
19 these statutes are vague and is there a -- what makes
20 something AR-like, what makes something AK-like without
21 actually being an armor-like rifle or what have you. And
22 there are parts that are interchangeable. I mean, apparently
23 it's the moves per second.

24 All right. So, I would be anticipating asking
25 questions with respect to that. That is a concern that I

1 have. If there's a question what constitutes -- If it goes to
2 a legitimate question what constitutes an AR-like rifle or
3 AK-like rifle or some of the other ones that are set out
4 specifically in the statute, who's going to decide that? Will
5 the Judge decide that? Will the jury decide that? Does it
6 force a Defendant to forgo Fifth Amendment rights so they
7 could testify as to their knowledge of guns and why they
8 thought something was or was not AR-like or AK-like? I think
9 it's reasonable to allow the Government to take depositions of
10 any of the witnesses that have filed -- or I should say
11 *affiants* that have filed affidavits in support of the
12 Plaintiffs' motion, but I would like to get these -- I would
13 like to get this argued in -- Today is the 14th, right? I
14 would like to get this argued either later next month or early
15 in October, because there's a lot at stake with the criminal
16 statute. It's significant.

17 So, what I would suggest is, Mr. Wells, Mr. Maag,
18 maybe you guys can talk to see about getting depositions set
19 of the witnesses, and let's -- Today is the 14th. Why don't
20 we give you -- Do you think we could get these depositions
21 taken in the next 30 days, understanding, Chris, your family
22 vacation next week, you don't have to worry about this?

23 MR. MAAG: I can make all of my *affiants* available
24 for deposition, understanding his vacation, within three
25 weeks.

1 MR. WELLS: Your Honor, 30 days may be aggressive,
2 but 45, I think, is feasible.

3 THE COURT: All right. 45 it is.

4 MR. WELLS: And just to be clear, Your Honor, my
5 understanding is that we are talking about depositions of the
6 Plaintiffs. I do, again, think that we would be inclined to
7 subpoena firearms manufacturers. If Your Honor is not going
8 to allow that, I just want to be clear that that is our
9 request.

10 THE COURT: I understand that.

11 MR. MAAG: And if they are going to be taking
12 depositions of my affiants, I would like the reciprocity of
13 being able to take deposition of theirs.

14 THE COURT: Any objection to that, Mr. Wells?

15 MR. WELLS: No. I think if we are talking about
16 discovery, it's a two-way street.

17 THE COURT: All right. So, I will go along with
18 that. The one thing I had about manufacturers is because this
19 is a facial challenge to the statute, isn't that a question of
20 law?

21 MR. WELLS: I think it certainly could be contributed
22 to a question of law, but I don't think it -- The way that
23 Plaintiffs have argued it, it seems to be a mixed question of
24 fact and law as they're presenting it, and, again, in
25 particular it's specific claims that the Plaintiffs are making

1 about the scope of interchangeability. And, as Your Honor
2 knows based on the briefing, it's not enough for them to just
3 show that, hey, there are one or two firearms where -- or more
4 firearms where you can have interchangeability. They have to
5 show that the statute lacks a core of understandable meaning,
6 and I think that is -- could be a mixed question of fact and
7 law.

8 THE COURT: What about a pump-action shotgun that
9 looks exactly like an AR-15? Could that be a AR-like weapon,
10 or does it have to be a weapon that it's semi-automatic?

11 MR. WELLS: Well, Your Honor, I think speculation and
12 hypotheticals about particular firearms are not appropriate in
13 the context of a facial challenge. The obligation is to show,
14 by Plaintiffs, that there is no set of circumstances in which
15 the statute could be applied constitutionally. And, as we
16 laid out in the briefing, we think that with respect to this
17 statute there are three different notice mechanisms. There's
18 the list of covered weapons, there's the list of
19 characteristics, and then there's the list that will be
20 published by ISP on October 1st.

21 THE COURT: I understand your argument.

22 MR. WELLS: Right. So, while I certainly am
23 interested in having a complete record, to the extent that the
24 Court is going to rest its decision on particular firearms or
25 descriptions of particular firearms, we would want to be able

1 to develop the record along those lines that allow the Seventh
2 Circuit -- In terms of the oral argument, I think there were
3 unresolved factual questions that they were struggling with
4 and -- on the Second Amendment claims, and certainly in this
5 context there may be unresolved factual questions, as well.
6 We think in the interest --

7 THE COURT: Well, with respect to my case, what were
8 the unresolved factual questions that they had with respect to
9 my case? And, I mean, Barrett and these cases -- or *Barnett*
10 and these cases.

11 MR. WELLS: So, I think there were -- Judge Wood in
12 particular asked questions about the composition of the 24
13 million number that was quoted at various points, who owns
14 those 24 million, are all of them lawfully owned, how do we
15 make that determination, how were these weapons being used in
16 practice. There were surveys that were cited in the record
17 that I think the Court was certainly interested in trying to
18 unpack what the record actually showed in that space, and I
19 think there were an acknowledgement in oral argument that
20 there were unresolved questions in the record. Whether or not
21 those are, you know, materially-disputed facts, we don't know
22 how and what will weigh into the preliminary injunction ruling
23 by the Seventh Circuit. We don't know, but there certainly
24 seem to be some remaining questions in the oral argument.

25 THE COURT: Well, I am going to let you take the

1 depositions of the affiants in *Langley*. And if their evidence
2 is insufficient or not adequate to support the claim, then so
3 be it. Once you take your depositions, if you believe that in
4 light of their depositions there has to be some other -- some
5 additional discovery that's conducted, I'll entertain that.
6 But, what I would like to do now is pick a date that we can
7 calendar for oral argument of the *Langley* challenge to the
8 constitutionality of the statute on the grounds of vagueness.

9 So, Jackie, what do we have in, say, mid October?

10 COURTROOM DEPUTY: Mid October you have a two-week
11 trial, so --

12 THE COURT: Which one is that? Is that --

13 COURTROOM DEPUTY: *Anderson*.

14 THE COURT: *Anderson*.

15 COURTROOM DEPUTY: *Anderson*, uh-huh.

16 THE COURT: That's probably going to go.

17 How about the third week of October?

18 COURTROOM DEPUTY: Well, you have, like, the second
19 week, which is the week of -- Monday is Columbus Day, but you
20 have availability, it looks like, the 10th, 11th, and 12th
21 that week.

22 THE COURT: All right. Mr. Wells, 10th, 11th, or
23 12th.

24 You are muted. Chris, you are muted.

25 MR. WELLS: Sorry, Your Honor. The 10th or 11th or

1 12th of October would work.

2 THE COURT: Tom?

3 MR. MAAG: Court's pleasure.

4 THE COURT: Okay. I will set it for 1:30 in the
5 afternoon. I like to do these in person. I will set them in
6 the afternoon because that accommodates travel time. But,
7 if -- I let the people who travel the farthest distance give
8 me a time. If you would rather have it at 10:30 in the
9 morning, Mr. Wells, I can do 10:30; otherwise, it will be
10 1:30.

11 MR. WELLS: 1:30 is fine, Your Honor.

12 And, just one clarification about the scope. So, the
13 motions that are -- for which there have been briefs filed
14 relate to the vagueness challenge. The Fifth Amendment
15 challenge has not been briefed yet.

16 THE COURT: That's correct. Go ahead.

17 MR. WELLS: Are you going to focus -- Is the hearing
18 going to be limited to the vagueness challenge or to both?

19 THE COURT: You didn't brief the Fifth Amendment, Mr.
20 Maag, and so I'm going to stick with only the vagueness
21 challenge.

22 MR. MAAG: Understood.

23 THE COURT: Okay. So, it's *vagueness*.

24 I can understand your answer, because I did reference
25 the fact that the Fifth Amendment would have, with the

1 statute, somehow compel a litigant or Defendant to forego
2 Fifth Amendment rights to try to explain why he or she thinks
3 this is not an AR-like weapon or a variation or whatever.

4 So, let's do -- What are those dates, Jackie?

5 COURTROOM DEPUTY: They are October 10th, is a
6 Tuesday; 11th, Wednesday; 12th, Thursday.

7 THE COURT: Let's do -- How does Tuesday sound?
8 Tuesday or Wednesday?

9 MR. MAAG: Perfect.

10 THE COURT: Perfect?

11 MR. MAAG: Perfect.

12 MR. WELLS: I'm just checking the calendar here real
13 quick. So, that Monday is, I believe, a holiday. So,
14 Wednesday --

15 THE COURT: Oh, let's do Wednesday, then. We will
16 have a day in the office to prepare.

17 MR. WELLS: The other request I would have, Your
18 Honor, is to the extent that this type of discovery is going
19 to be taking place, how would you like the Court to be
20 apprised of any other kind of additional factual points or
21 points of law that we might want to raise?

22 THE COURT: I'm going to let you file -- There's a
23 couple of things, and I was going to move to that next.

24 There's going to be -- When I started off I said that
25 there's a lot of Courts that are looking at a number of

1 different Second Amendment claims both in the regulatory
2 capacity and the criminal capacity, and so I anticipate that
3 there are going to be other decisions that come down and one
4 side or the other might say, "Well, here's a case that came
5 out of North Carolina we think you should read, Judge." I'm
6 going to liberally grant leave to supplement your briefs with
7 cases that may come down between now and the time of oral
8 argument, and really it's between now and the time that you
9 get a written decision from them.

10 With respect to discovery, you should notify me that
11 the depositions have been completed. If there's a problem
12 getting them completed in time, let me know, we will see if we
13 can work through that. But, you are free to file any motion
14 where you say, look, in light of certain facts that were
15 developed in the depositions, the Court may deem it prudent to
16 allow further discovery or limit what would otherwise be
17 considered in arguments before the Court. And, you know, we
18 can deal with that in -- I can deal with that in real time.

19 MR. WELLS: Understood. And I assume that with
20 respect to any depositions, obviously if the Seventh Circuit,
21 however it rules in the case, comes back in its entirety, you
22 know, there will be questions about whether or not we will
23 have the opportunity to depose based on the Second Amendment
24 claim, I want to make sure that we reserve our right to, you
25 know, explore discovery on those claims, as well, when we get

1 there.

2 THE COURT: So, here's what I would propose: If the
3 Seventh Circuit enters a ruling in the other issues that are
4 before it in the consolidated cases under *Barnett*, I would
5 probably set a quick status conference, maybe a Zoom
6 conference where the lawyers can talk and say, all right, in
7 light of the Seventh Circuit's decision what -- what's left to
8 be done, and then we will just deal with that on the fly,
9 because I have no idea how they are going to rule and it might
10 make some of what we are talking about moot, it might make --
11 it might mean that the depositions that are being taken might
12 want to cast a wider net than just the -- that which is part
13 of the -- raised in Counts IV and VI of the *Langley*
14 litigation.

15 How does that sound?

16 MR. WELLS: Understood. And I recognize we are at a
17 moment of uncertainty, obviously, given that we are waiting on
18 the Seventh Circuit, but I appreciate the Court's
19 consideration and we will take it as it comes.

20 THE COURT: Tom, does that sound like a fair way to
21 work it with you?

22 MR. MAAG: Lovely.

23 THE COURT: All right. Yeah, maybe the Seventh
24 Circuit was just waiting to see what the Illinois Supreme
25 Court was going to do. And they did what they were going to

1 do this past Friday, so who knows? But, it's -- They can, in
2 their discretion, in good time, release a decision that they
3 think is appropriate. I just want to make sure that I don't
4 wait too long on some of these things, because, as I say, it
5 is a request relief for -- (inaudible) emergency relief, but
6 it's a request to determine if going forward the statute is
7 even enforceable as written in a criminal context.

8 All right. Anything else for the Plaintiff in
9 *Langley*?

10 MR. MAAG: No, thank you, Judge.

11 THE COURT: Anything else for any of the Defendants?

12 MR. WELLS: Nothing further, Your Honor.

13 THE COURT: All right.

14 Well, thank you. And the oral arguments will be the
15 Wednesday -- Is that the 12th? We will do it in person here
16 at the courthouse.

17 COURTROOM DEPUTY: That's the 11th.

18 THE COURT: The 11th. And I know that maybe there's
19 -- I have not given as fixed a deadline on things as we
20 normally see in Federal Court, but I wanted to give the
21 parties the flexibility to try to get accomplished what they
22 want to get accomplished before oral argument on this, and
23 invariably if I set a very, very tight deadline, there's a
24 motion to revise it because something else has popped up.

25 All right. We are off the record.

1 (Off the record).

2 (Proceedings adjourned at 2:02 p.m.)

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4
5
6 REPORTER'S CERTIFICATE

7 * * * * *

8 I, Stephanie K. Rennegarbe, RDR, CRC, Official Court
9 Reporter for the U.S. District Court, Southern District of
10 Illinois, do hereby certify that I reported with mechanical
11 stenography the proceedings contained in pages 1-22; and that
12 the same is a full, true, correct and complete transcript from
13 the record of proceedings in the above-entitled matter.

14
15 /S/ Stephanie K. Rennegarbe,
16 IL CSR, RDR, CRC

08/16/2023